

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of)
Richard Francis Russell, et al.) Group: 2152
Serial No.: 09/818,179)
Filed: March 27, 2001)
Title: METHOD OF SHARING A PRINTER) Examiner: V. Lesniewski

REPLY BRIEF

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The present Reply Brief is in response to the Examiner's Answer, mailed June 13, 2007. The present Reply Brief is related to Appellants' appeal of the decision of the Examiner dated April 3, 2006, finally rejecting claims 1-23.

Appellants' statements made in this Reply Brief are supplemental to Appellants' statements made in the Brief of Appellants (hereinafter, Appellants' Brief), filed August 21, 2006.

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II. STATUS OF CLAIMS

Pending: Claims 1-23

Canceled: None

Allowed: None

Objected To: None

Rejected: Claims 1-23

Withdrawn from Consideration: None

On Appeal: Claims 1-23

III. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-10, 12, 17, 18 and 20-23 were rejected under 35 U.S.C. §102(e) as being anticipated by Yamazaki (U.S. Patent No. 6,785,727 B1).

B. Claims 11 and 13-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yamazaki.

C. Claim 19 was rejected under 35 U.S.C. §103(a) as being unpatentable over Yamazaki in view of Official Notice.

IV. ARGUMENT

A. REPLY TO EXAMINER'S RESPONSE TO ARGUMENT (I)

The Examiner states that Appellants' discussion of "host-based paradigm" is not set forth as a definition of "host-based networking hardware", nor is the discussion in the specification a limitation of the claims, relying on *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellants do not ask for limitations to be read in the claims, only that the claims be interpreted in light of the specification, as provided by *In re Van Geuns*. As set forth in Appellants' Specification at page 1, lines 11-17, a "host-based paradigm separates the image processing (fonts, images, etc.) from the physical printing mechanism such that the intensive raster image processing is performed on the host computer, leaving the printer's processor free to perform the task of physically placing the pixels on the media. The processing power required to physically place the pixels is significantly smaller than that required of printers that also interpret data streams." (Emphasis added). Appellants respectfully submit that by understanding the adjective "host-based" in a printing environment, one skilled in the art would easily understand what is meant by the term "host-based networking hardware" in the context of printer sharing in a computer network, as more specifically recited in Appellants' claims.

In characterizing the Yamazaki printer as a host-based printer, the Examiner asserts in the Answer at page 11 that, "Yamazaki states that the control unit [1001] controls the whole of the printer and analyzes information supplied by the host computer" and asserts that this control unit (1001) "is used in order to enable all communications between the printer and the host system and it communicates directly with host computer

2000.” Appellants respectfully submit, however, that the quote of the Examiner set forth above leaves out a very important word in ascertaining whether the Yamazaki printer is a “host-based” printer. The actual language from Yamazaki is “1001 denotes a printer control unit for controlling the whole of the printer 1000 and analyzing character information and the like supplied from the host computer. (Column 4, lines 2-5; emphasis added). As previously stated in Yamazaki column 3, lines 60-67, “symbol 1000 denotes a printer which inputs and stores printing information (such as character codes) and form information or a macro instruction supplied from a host computer (refer to FIG. 2) connected to a local area network (LAN) through a network board 1017, generates corresponding character patterns and form patterns in accordance with these pieces of information, and form an image on a recording material such as a recording sheet.” (Emphasis added). Further, the control unit 1001 of printer 1000 in Yamazaki must perform resource intensive tasks, including the processing of page description language (PDL) data packets received from host 2000/3000. (See Yamazaki column 3, line 60-column 4, line 5; column 13, lines 50-52; column 15, lines 6-16; column 17, lines 58-61).

Accordingly, Appellants maintain that Yamazaki does not disclose, teach or suggest attaching “host-based” networking hardware to the printer, as recited in Appellants’ claims.

B. REPLY TO EXAMINER’S RESPONSE TO ARGUMENT (2)

The Examiner asserts at page 12 of the Answer that the reservation scheme in Yamazaki “is seen as meeting the limitation of ‘a fair-sharing first come first serve basis’ as

it allows only one user to utilize the printer at a time while creating a sharing system that is fair in that users are allocated print times on a first come first serve basis." (Emphasis added). However, the Examiner further states in Argument 4 of the Answer at page 15 with respect to Yamazaki, "A reservation request is sent on the command channel and allows the user to acquire the data channel...." (Emphasis added). Thus, the Examiner's assertion of being "fair in that users are allocated print times on a first come first serve basis" is related to the allocation (reservation) of print times by the reservation request sent on the command channel on a first come first serve basis. In contrast, for example, claim 1 recites in part, "providing a network communication protocol defining a command channel and a data channel" and "allowing only one of the users to own the data channel at any single point in time on a fair-sharing first come first serve basis...."

Thus, the Examiner's statements support a conclusion that Appellants' claims are not anticipated by Yamazaki, in that the Examiner's arguments go to demonstrating that Yamazaki supports acquiring (owning) a command channel to make reservations on a fair sharing first come first serve basis, rather than supporting a conclusion that Yamazaki allows only one of the users to own the data channel at any single point in time on a fair-sharing first come first serve basis, as recited in Appellants' claims.

Appellants add that in Yamazaki that the acquiring of the data channel does not occur until the time of the reservation, and that Yamazaki expressly gives *preferential treatment* to a reserver in a reserved time zone even if another user is first in time in attempting to use the data channel, as set forth in Appellants' brief (see also Yamazaki at column 13, lines 26-33), which clearly is not allowing only one of the users to own the data channel at any single point in time on a fair-sharing first come first serve basis, as recited in Appellants' claims.

Appellants' brief further details why the reservation system disclosed in Yamazaki does not disclose, teach or suggest the subject matter of Appellants' claims.

Appellants maintain that Yamazaki does not disclose, teach or suggest allowing only one of the users to own the data channel at any single point in time on a fair-sharing first come first serve basis, as recited in Appellants' claims.

C. REPLY TO EXAMINER'S RESPONSE TO ARGUMENT (3)

The Examiner asserts at page 14 of the Answer that in Yamazaki (referring to Fig. 16) the "Owner of the Document" "is in fact the user who is utilizing the printer for that reserved time." (Emphasis added).

Fig. 16 of Yamazaki illustrates exactly why the reservation based method of Yamazaki utilizing a "reserved time" does not utilize "allowing only one of the users to own the data channel at any single point in time on a fair-sharing first come first serve basis", as recited in Appellants' claims. Note that in Fig. 16 of Yamazaki, Document "lalala" is owned by DDD, and that in the notice box 2101, with respect to Document "lalala" there is the notice "SUSPEND" "STOP PRINTING" "CHANGE PRIORITY", and that Document "ugauga" owned by AAA is "PROCESSING". Thus, DOCUMENT "lalala" owned by DDD was stopped after printing was started, and Document "ugauga" was processed out of turn, which clearly is not allowing only one of the users to own the data channel at any single point in time on a fair-sharing first come first serve basis.

D. REPLY TO EXAMINER'S RESPONSE TO ARGUMENT (4)

Appellants provide no further comment, and rely on the statements made in Appellants' Brief.

E. REPLY TO EXAMINER'S RESPONSE TO ARGUMENT (5)

The Examiner re-asserts in the Answer at page 15 that Yamazaki column 13, lines 43-46; column 13, lines 66-column 14, line 6; and column 22, lines 57-59 discloses, as recited in Appellants' claim 12, "wherein the communication frame has a frame number and a sequence number, the host-based networking hardware discarding any said communication frame that does not have an expected said sequence number."

Yamazaki column 13, lines 43-46; column 13, lines 66-column 14, line 6; and column 22, lines 57-59 do not disclose anything that in any manner relates to discarding a communication frame.

Yamazaki, column 22, lines 57-59, states, "When the translator 1112 currently analyzes a job having a job number different from the received job number, it ignores the command." (Emphasis added). Appellants respectfully submit that "ignoring" a command is not akin to discarding a communication frame, let alone discarding any said communication frame that does not have an expected said sequence number.

Further, as set forth in Yamazaki, column 22, lines 54-57 (just prior to lines 57-59 on which the Examiner relies), "When the PDL translator 1112 currently analyzes a job corresponding to a received job number, it stops PDL analysis in accordance with the cancel command." Likewise, a cancel command that stops PDL analysis of a received job is not

akin to discarding a communication frame, let alone discarding any said communication frame that does not have an expected said sequence number.

F. REPLY TO EXAMINER'S RESPONSE TO ARGUMENT (6)

The Examiner asserts in the Answer at page 16 that “appellant has not responded to the statements of obviousness made in the rejection which show that the use of acknowledgements ‘in the claimed fashion’ was well known in the art and that one of ordinary skill would have been motivated to use acknowledgement in Yamazaki’s system to help assure proper data transfer, a (sic.) well known in the art, and a well known advantage produced by using acknowledgements.” (Emphasis added). Appellants respectfully disagree, in that the rejection does not show that the use of acknowledgements “in the claimed fashion” was well known in the art, but rather, merely asserts that it would be obvious to modify Yamazaki use an acknowledgement without addressing the further limitations relating to the acknowledgement set forth in claim 13.

It may be helpful to again look at the language of claim 13, which recites, in part, “wherein, in response to receiving said communication frame that does not have said expected sequence number, the host-based networking hardware *sends an acknowledgement including the frame number of a last successfully received communication frame* to the user that owns the data channel.” (Emphasis added). No doubt, the mere sending of an acknowledgement is old in the art. However, to merely say it would be obvious to send acknowledgements to the user of the data channel is to ignore the type, or content, of the acknowledgement being sent and the conditions under which the acknowledgement is being sent as set forth in claim 13 (see the underlined text of claim 13, immediately above).

“To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” MPEP 2143.03, October 2006, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Thus, the Examiner did not establish prima facie obviousness with respect to claim 13, since the Examiner does not provide in the Final Office Action, nor in the Examiner’s Answer, any indication of where in all of Yamazaki that there is any disclosure, teaching or suggestion of the specific type of acknowledgement and associated conditions, as recited in claim 13, but rather makes only general statements relating to obviousness of use of an acknowledgement.

G. REPLY TO EXAMINER’S RESPONSE TO ARGUMENT (7)

With respect to claims 14-16, the Examiner asserts in the Answer at page 17 that “appellant has not responded to the statements of obviousness made in the rejection which show that the use of timeouts in the ‘claimed fashion’ was well known in the art.” (Emphasis added). Appellants respectfully disagree, in that the rejection does not show that the use of timeouts “in the claimed fashion” was well known in the art, but rather, merely asserts that it would be obvious to modify Yamazaki to use a timeout without addressing the further limitations relating to the timeout as set forth in claims 14-16.

No doubt, the mere use of timeouts is old in the art. However, to merely say it would be obvious to use timeouts is to ignore the context as to how the timeouts are used, as set forth in claims 14-16.

“To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” MPEP 2143.03, October 2006,

citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Thus, the Examiner did not establish prima facie obviousness with respect to claims 14-16, since the Examiner does not provide in the Final Office Action, nor in the Examiner's Answer, any indication of where in all of Yamazaki that there is any disclosure, teaching or suggestion of the specific conditions of use of a timeout, as recited in claims 14-16, or why it would be obvious to modify Yamazaki to include the specific recitations as set forth in claims 14-16, but rather makes only general statements relating to obviousness of use of a timeout.

H. CONCLUSION

For the reasons set forth in Appellants' Brief and this Reply Brief, Appellants submit that appealed claims 1-23 are patentable in their present form. Appellants respectfully request that the Board reverse the final rejections of the appealed claims, and indicate that claims 1-23 are patentable in their present form.

Respectfully submitted,

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